84-640

Office-Supreme Court, U.S.
FILED
MAY 24 1984
ALEXANDER L. STEVAS,
CLERK

CASE NO. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1984

MARTHA B. GAUNCE,

Petitioner,

v.

NATIONAL TRANSPORTATION SAFETY BOARD
and FEDERAL AVIATION ADMINISTRATION,

Respondents.

On petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit
Title 28, United States Code, § 1254(1)

JURISDICTIONAL STATEMENT

MARTHA B. GAUNCE
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210
Telephone: (213) 273-3033

In Propria Persona

5911

October 7, 1984

Office of the Clerk
Supreme Court of the United States
1 First Street, N. E.
Washington, D. C. 20543

Re: Martha B. Gaunce v. National Transportation Safety Board and Federal Aviation Administration, 9th Cir. 82-7543, NTSB No. SE-5108, No FAA Designation

Dear Mr. Stevas,

As attorney for Martha B. Gaunce in the above-captioned matter, kindly enter the appearance of:

MARTHA B. GAUNCE

appearing before this Court, In Propria Persona.

Sincerely,

Martha B Gaunce

Martha B. Gaunce
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210
Telephone: (213) 273-3033

In Propria Persona

JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED FOR REVIEW

1. Was the action of the Federal Aviation Administration in denying due process to petitioner within the statutory and/or constitutional authority of the agency?

2. Was the action of the National Transportation Safety Board in denying due process to petitioner within the statutory and/or constitutional authority of the agency?

3. Has the United States Court of Appeals for the Ninth Circuit so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an administrative agency and an independent agency, as to call for an exercise of the Court's power of supervision?

LIST OF ALL PARTIES

Pursuant to Rule 21.1(b) of the Rules of the Supreme Court, to the knowledge of petitioner, all parties to the proceeding in the United States Court of Appeals for the Ninth Circuit are listed in the caption.

OPINIONS BELOW

Pursuant to Rule 21.1(d) of the Rules of the Supreme Court, to the knowledge of petitioner, there are no official or unofficial reports of any opinions delivered in the courts or agencies below.

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TABLE OF AUTHORITIES

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Due Process Clause of the Fifth Amendment, cited on page 4 21a

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49 U.S.C. § 1486(a), cited on page 2 23a

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49 U.S.C. § 1481, cited on page 1 26a

49 U.S.C. § 1903, cited on page 10 26a

Legislative History, Pub.L. 93-633, U.S. Code Congressional & Administrative News, 1966, Vol. 2, page 3390, Section 5. National Transportation Safety Board, cited on page 10 27a

5 U.S.C. § 554(b), cited on page 8 27a

5 U.S.C. § 554(c), cited on page 8 28a

5 U.S.C. § 556(d), cited on page 8 28a

5 U.S.C. § 556(e), cited on page 8 29a

5 U.S.C. § 558(b), cited on page 8 30a

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GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

By Act of Congress, Pub.L. 85-726, 72 Stat. 731, hereinafter referred to as the FA Act of 1958, the Federal Aviation Administration (FAA) was delegated the authority to provide for the regulation and promotion of civil aviation in such manner as to best foster its development and safety. Implementing this mandate in the FA Act of 1958, the Congress provided at section 1001 (49 U.S.C. § 1481)[1] for the conduct of proceedings to be subject to the mandate of the Administrative Procedure Act, Title 5 of the United States Code.

Pursuant to section 609 of the FA Act of 1958 (49 U.S.C. § 1429(a),[2] the FAA issued an Order of Revocation dated

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[1]Appendix F, page 26a

[2]Appendix F, page 24a.

July 18, 1980 revoking the airman certificate of petitioner.

Petitioner appealed this decision to the United States Court of Appeals for the District of Columbia, Gaunce v. Department of Transportation, et al., D.C.Cir. 80-1839, by filing of July 22, 1980, pursuant to 49 U.S.C. § 1486(a),[3] which petition for review was dismissed by order of October 20, 1980.

On November 3, 1980 petition for review was mailed to the National Transportation Safety Board (NTSB), pursuant to 49 U.S.C. § 1429(a),[4] which appeal was denied by NTSB Order No. EA-1805 dated July 6, 1982. Motion for Reconsideration was denied by NTSB Order No. EA-1828 dated September 9, 1982[5] from which petition for review was filed in the United

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[3]Appendix F. page 23a

[4]Appendix F, page 24a

[5]Appendix C, page 6a

States Court of Appeals for the Ninth Circuit dated September 23, 1982, pursuant to 49 U.S.C. § 1486(b).[6]

The decision of the NTSB was affirmed by the United States Court of Appeals for the Ninth Circuit by Memorandum filed February 12, 1984[7] from which decision petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit was docketed in that court dated March 12, 1984,[8] pursuant to 49 U.S.C. § 1486(f),[9] by filing in the clerk's office of that court.

Petitioner believes Title 28, United States Code, Section 1254(1),[10] as stated in Title 49, United States Code, Section

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[6] Appendix F, page 23a
[7] Appendix A, page 1a
[8] Appendix B, page 4a
[9] Appendix F, page 23a
[10] Appendix F, page 22a

1486(f),[11] confers jurisdiction of the appeal to this Court.

STATEMENT OF THE CASE

This action at law is the result of a fabrication of fiction from a web of pure fantasy by government officials intent on railroading this petitioner. She apologizes to the Court that its consideration of this hoax perpetrated upon her by the denial of due process[12] be required.

On or about June 27, 1979 she flew her aircraft, a Piper Cherokee, into the Cleveland-Hopkins (Ohio) Airport to be reinstated as a flight instructor. As an excuse for refusing to reinstate her rating, the FAA inspector alleged that the Oklahoma City (Aeronautical Center) computer was inoperable at that hour and, therefore, her credentials could not be

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[11] Appendix F, page 23a

[12] Appendix F, page 21a

verified.

On July 3, 1979 a letter of investigation was mailed to her implying investigation of a "situation."[13] The FAA is delegated by Act of Congress, FA Act of 1958, to reinspect aircraft, reexamine airmen, and investigate accidents. A "situation" is none of these.

Petitioner asked the FAA to document its allegations, and when denied, sought judicial intervention, Gaunce v. U.S.A., et al., DCDC 80-772. The district court judge, citing non-existent regulations (45 C.F.R. §§ 821.19 and 821.20),[14] stated that the discovery she sought might be available from an administrative law judge (ALJ) on appeal from the initial agency action, if necessary, at a later

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[13] Appendix E, page 18a

[14] There are no such regulations (45 C.F.R. §§ 821.19 and 821.20) in Title 45 of the Code of Federal Regulations.

time (emphasis supplied).

It appeared to petitioner then, and it so appears now (as she has argued at each step of these proceedings in turn) that when the FAA alleges that she failed to contact Cleveland Departure Control, the FAA must produce the tape recording of the Cleveland Departure Control Station for that date at that time of day to prove that she failed to contact departure control. When the FAA alleges that she had no biennial flight review (BFR), the FAA must show a demand to see her logbook, as testimony confirms no requirement or routine request. When the FAA alleges operation of an aircraft without current credentials, it must prove the discreditability of its own documents.

Although 49 U.S.C. § 1429(a)[15] and

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[15]Appendix F, page 24a

FAA ORDER No. 2150.3[16] state that in order to revoke an airman certificate, an investigation of an accident or reexamination of an airman's qualifications as an airman must take place, her airman certificate was revoked following an informal conference held)purportedly)[17] pursuant to 14 C.F.R. § 13.19[18] (and 5 U.S.C. § 556(d) which states that a sanction may not be imposed except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence).[19]

The agency must prove its allegations prior to the issuance of sanction, as the burden of proof is upon the

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[16] Appendix F, page 30a

[17] See Gaunce v. deVincentis, et al., N.D. Ill. 80C6417, CA7 81-1769, S.Ct. 83-531.

[18] Appendix F, page 32A

[19] Appendix F, page 28a

Administrator, 5 U.S.C. § 556(d),[20] and subsequent to informing the alleged violator of the matters of fact and law (to be) asserted at the informal conference at which consideration of the facts is to take place, pursuant to 5 U.S.C. § 554.[21]

As a separate fact material to consideration of this action at law, the FAA does not publish the agency orders of actions taken with regard to individual airmen. The agency thus prevents the individual from examining the nature of his alleged offense when compared to others similarly situated that have occurred previously. Few things are more basic to the foundation of American jurisprudence than the concept of stare decisis. It was partly because the King

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[20] Appendix F, page 28a

[21] Appendix F, page 27a, et seq.

had refused to comply with this doctrine that his Nobles extracted the promises of Runnymede. It was so basic to the jurisprudence of the colonies that when they had won their independence from the King they did not even mention the concept in the Constitution. The FAA by not permitting access to previous decisions is ignoring a fundamental lynchpin in the foundations of government. The FAA in so acting permits itself to act in an arbitrary and capricious manner. Recognizing the validity of the claims of persons appearing before regulatory agencies, the Congress enacted the Equal Access to Justice Act of 1980 mandating the agencies to address the problem of abusive and harassing regulatory practices.

To the knowledge of petitioner, there is no case extant similar to this: that an airman certificate has been revoked by

the FAA because the pilot did not have in his possession on his person his airman certificate. This instant action at law turns on the size of a piece of paper, as stated to the NTSB and appellate court in turn.

The NTSB is delegated by Act of Congress[22] to review on appeal (emphasis supplied) the FAA order. It is in the implication that the NTSB possesses statutory authorization to provide discovery to this petitioner that the hoax perpetrated upon her by the FAA was permitted to continue throughout the proceedings at the NTSB level of administrative action. The proceedings during that level were a farce augmenting the sham and mockery of the proceedings at the FAA level, merely reinforcing the denial of due process of

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[22]Appendix F, pages 26a and 27a: 49 U.S.C. § 1903(a)(9) and as set forth in the legislative history of the NTSB, Pub.L. 93-633.

law. The ALJ repeatedly dangled the carrot of access to the production of documentation, but knew none need be forthcoming. And, of the reliable, substantial and probative requirement of law, none was.

Petitioner appealed the NTSB Order suspending her license for 150 days to the 9th Circuit which raised the suspension to 180 days.[23] When FAA personnel entered their appearance as counsel of record for the Government before the court, petitioner filed a motion for change of counsel of record which motion was denied by Judge Boochever, circuit judge. Petitioner cited 28 U.S.C. § 547 as her statutory authority requiring the United States attorney to defend for the Government; no statutory authority was cited by the Court in the denial of her

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[23] NTSB Order EA-1828, Appendix C, page 6a, 9th Cir. Memorandum, Appendix A, page 1a.

motion. The officials and personnel of the Department of Justice proferred as the grounds for redelegation to the FAA of the statutory authority to represent the Government the action at law before the appellate court Title 28 C.F.R. Appendix to Subpart Y.[24] This regulation bears the title of "Redelegations of Authority to Compromise and Close Civil Claims, Civil Division."

CONCLUSION

Petitioner contends that the FAA exceeds its statutory authority as a governmental entity when its personnel appear as counsel of record in a court of law.

Petitioner contends that the Department of Justice exceeds its statutory authority as a governmental entity

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[24] Appendix F, page 35a, et seq.

when its personnel misrepresent their lack of statutory authority to represent the Government in a court of law as the capability to grant to FAA personnel the statutory authorization to represent the Government as counsel of record in a court of law.

Petitioner contends that she is before this Court as a result of arbitrary and capricious agency action by the FAA in the failure and refusal to produce proof of the allegations of violation of Federal Aviation Regulations (FARs) of July 3, 1979[25] at any time thereafter to the detriment and injury to her.

Petitioner contends that she is before this Court as a result of the complicity of the NTSB in permitting the hoax perpetrated upon her by the FAA to continue.

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[25]Appendix E, page 18a, et seq.

Petitioner contends that the further compounding of the injury to her in the implementation of the pretense of formal appointment as counsel for which no statutory authority exists permitted by the appellate court of law demands the exercise of this Court's power of supervision.

Petitioner profers to this Court as a separate filing her motion to bring up record that the agency which bears the burden of proof be required to produce the evidence to substantiate its allegations of regulation violation, or acknowledge that no such evidence exists, that the order of revocation issued by that agency may be declared null and void.

Respectfully submitted,

Martha B Gaunce

Martha B. Gaunce
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210

In Propria Persona

APPENDICES

Appendix A

Opinion of United States Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 82-7543

MARTHA B. GAUNCE,

Appellant-Petitioner

vs.

NATIONAL TRANSPORTATION SAFETY BOARD
and FEDERAL AVIATION ADMINISTRATION,

Appellees-Respondents

On Petition for Review of an Order
of The National Transportation Safety Board

Argued and Submitted: February 9, 1984

Before: BROWNING, GOODWIN, and Kennedy,
Circuit Judges

MEMORANDUM*

*The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21, of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, foregoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided by Rule 21(c).

We have examined the record here and find Gaunce's appeal meritless. The complaint of the Federal Aviation Administration (FAA) was timely; abundant evidence justified the FAA's order of revocation, the informal FAA conference and right to appeal to the NTSB provided due process, and substantial evidence supported the NTSB findings that Gaunce violated federal aviation regulations. See Cobb v. National Transportation Safety Board, 572 F.2d 202, 203-04 (9th Cir. 1977).

Suspension of Gaunce's certificate for 180 days was proper. In fact it seems lenient. Cf. Cobb at 204 (concurring opinion).

Gaunce's argument that stare decisis requires more complete record keeping of adjudications before the

agency was not properly raised below; nor does it change the propriety of the FAA's actions in the circumstances here.

The NTSB's action is AFFIRMED.

FILED

February 13, 1984

Phillip B. Winberry
Clerk,
U.S.Court of Appeals

Appendix B

NOTICE OF APPEAL

IN THE
SUPREME COURT
OF THE UNITED STATES

MARTHA B. GAUNCE,

Petitioner-Appellant,

v.

NATIONAL TRANSPORTATION SAFETY BOARD
and FEDERAL AVIATION ADMINISTRATION,

Respondents-Appellees.

Appeal from the United States Court of
Appeals for the Ninth Circuit.
No. 82-7543.

Taken as of right from an Order of the
National Transportation Safety Board,
No. EA-1828.

Taken as of right from an Order of
Revocation issued July 18, 1980 by
the Federal Aviation Administration,
unnumbered or otherwise classified.

Notice is hereby given that Martha B. Gaunce, Petitioner-Appellant above-named, appearing In Propria Persona, hereby appeals to the Supreme Court of the United States, pursuant to Title 28, United

States Code, Section 1254(1), from the final judgment entered in this action by the United States Court of Appeals for the Ninth Circuit on the 13th day of February, 1984.

/s/

Martha B. Gaunce
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210

DATED: February 24, 1984.

RECEIVED
Phillip B. Winberry
Clerk, U.S.Court of Appeals
March 12, 1984

RECEIVED
February 27, 1984
Office of the Clerk
Supreme Court, U.S.

DOCKETED: BB 14

Appendix C

NATIONAL TRANSPORTATION SAFETY BOARD
FINAL ORDER

SERVED: September 9, 1982

NTSB Order No. EA-1828

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD at its office in Washington, D. C. on the 2nd day of September, 1982

J. LYNN HELMS, Administrator,
Federal Aviation Administration,

Complainant,

v.

MARTHA B. GAUNCE,

Respondent.

DOCKET SE-5108

ORDER DENYING RECONSIDERATION

Respondent has requested reconsideration of Order EA-1805, served July 6, 1982, whereby the Board affirmed an initial decision imposing a suspension of respondent's airman certificates for 150

days. Respondent contends that the Board order is contrary to law and against the weight of the evidence.

The Administrator has filed a reply contending that respondent failed to state with specificity the matters of record alleged to have been erroneously decided or the grounds relied upon, as required by Section 821.50 of the Board's Rules (49 CFR § 821.50). The Administrator submits that the Board Order was fully supported by the law and the evidence presented.

In view of the fact that the Board examined the evidence of record and found substantial support for the initial decision, both with respect to the law judge's findings of fact and his conclusions of law, we conclude that there is no valid basis for reconsideration of the Board Order.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for reconsideration is denied.

BURNETT, Chairman, GOLDMAN, Vice Chairman, MCADAMS, BURSLEY, and ENGEN, Members of the Board, concurred in the above order.

Appendix D

FEDERAL AVIATION ADMINISTRATION
FINAL ORDER

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
GREAT LAKES REGION
2300 East Devon Avenue
Des Plaines, Illinois 60018

In Reply
Refer to: AGL-7E
GL-79-OG-553
Area Code 312 694-4500 X313

July 18, 1980

HAND DELIVERED

TO: Ms. Martha B. Gaunce
2 Delta
Romulus, Michigan 48174

ORDER OF REVOCATION

It has been determined by the Administrator of the Federal Aviation Administration, acting by and through his Regional Counsel, that on the basis of all available information, you violated the Federal Aviation Regulations hereinafter enumerated in the following respects:

1. You hold Airman Certificate Number 348609 with Commercial Pilot privi-

leges and Airplane Single-Engine Land and Instrument ratings.

2. On June 27, 1979, you acted as pilot in command of civil aircraft N4295J, a Piper 28-140, owned by you, on flights in air commerce arriving and departing Cleveland-Hopkins Airport.

3. You arrived at Cleveland-Hopkins Airport for the purpose of securing a flight instructor reinstatement check-ride. You did not, however, have in your personal possession a current pilot certificate issued to you under Part 61, nor did you have in your personal possession an appropriate current medical certificate issued under Part 67 of the Federal Aviation Regulations.

4. Upon the request of an FAA Inspector to see and examine your pilot's log, you refused to permit such inspection, which request was renewed and

refusal repeated on July 17, 1979.

5. At the time of the flights described on June 27, 1979, you had not, within the preceding 24 months, accomplished a flight review given to you in an aircraft for which you are rated by an appropriately certificated instructor or other person designated by the Administrator. You had not had your logbook endorsed by a person giving the review described above, certifying that you had satsifactorily (sic) accomplished the flight review.

6. Although you were specifically advised by the FAA Inspector that you would be in violation of the regulations if you were to fly under the circumstances described above, you nevertheless departed Cleveland-Hopkins Airport without having the appropriate certificates in your personal possession, and in the process of departing were given a clearance

including a provision to contact Departure Control on frequency 118.15. In addition to the clearance just referred to, you were instructed by Air Traffic Control to contact Departure Control which you failed and refused to do.

By reason of the foregoing circumstances, you violated the following Federal Aviation Regulations:

a. Section 61.3(a), in that you, within the United States, acted as pilot in command of a civil aircraft when you did not have in your personal possession a current pilot certificate issued to you under Part 61 of the Federal Aviation Regulations.

b. Section 61.3(c), in that you acted as pilot in command of an aircraft when you did not have in your personal possession an appropriate current medical certificate issued under Part 67 of the Federal

Aviation Regulations.

c. Section 61.51(d)(1), in that you did not present your logbook for inspection upon reasonable request by the Administrator or an authorized representative.

d. Section 61.57(a)(1), in that you acted as pilot in command of an aircraft when you had not, within the preceding 24 months, accomplished a flight review given to you in an aircraft for which you were rated by an appropriately certificated instructor or other person designated by the Administrator.

e. Section 61.57(a)(2), in that you acted as pilot in command of an aircraft when you had not, within the preceding 24 months, had your logbook endorsed by the person who gave you the review certifying that you had satisfactorily accomplished the flight review.

f. Section 91.75(a), in that you, as

pilot in command, deviated from an air traffic control clearance without obtaining an amended clearance.

g. Section 91.75(b), in that in an area in which air traffic control is exercised, you operated an aircraft contrary to an air traffic control (ATC) instruction.

h. Section 91.9, in that you operated an aircraft in a careless manner so as to endanger the life or property of another.

Further, it appears that you lack the degree of care, judgment, responsibility and skill required of the holder of such certificate.

By reason of the foregoing, the Administrator has determined that safety in air commerce and the public interest require the revocation of your airman certificate.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator of the Federal Aviation Administration by Section 609 of the Federal Aviation Act

of 1958, as amended, that:

1. Any airman certificate now held by you, including your Commercial Pilot Certificate No. 348609 is hereby revoked;

2. Such revocation shall be effective August 7, 1980;

3. No application for a new airman certificate shall be accepted from you, nor shall any airman certificate be issued to you, for a period of one (1) year subsequent to the actual surrender of the certificate herein revoked;

4. You are directed to surrender such certificate by mail or delivery to the Regional Counsel of the Federal Aviation Administration.

CARL B. SCHELLENBERG
Regional Counsel

By: /s/

PIERRE H. deVINCENTIS
Attorney

APPEAL

You may appeal from this Order within twenty (20) days from the time of its service upon you. Your appeal must be filed within that time with the National Transportation Safety Board, Office of Administrative Law Judges, Waterfront Center, Suite 301, 1010 Wisconsin Avenue, N.W., Washington, D. C. 20007, pursuant to the Board's Rules of Practice in Air Safety Proceedings, Title 49 Code of Federal Regulations Part 821. A copy of your appeal must be furnished this office. Such appeal will stay the effectiveness of this Order.

You are hereby advised that a copy of this Order will be forwarded to the National Transportation Safety Board in the event you appeal and will be considered the Administrator's Complaint on Appeal.

Appendix E

Letter of Investigation

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

GENERAL AVIATION DISTRICT OFFICE NO. 6
Federal Facilities Office Building
Cleveland Hopkins Int'l Airport
Cleveland, Ohio 44135

July 3, 1979

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Martha Blair Gaunce
514 W. 13th Avenue
Willston (sic), North Dakota 58801

Dear Ms. Gaunce:

Personnal of this office are investigating a situation which occurred in relation to a scheduled flight instructor_ reissuance check conducted at AGL-GADO, Cleveland on June 27, 1979.

It is alleged that you piloted Piper 28-140, N4295J on June 27, 1979 without having in your personal possession a current pilot certificate and current medical certificate. It is also alleged that you had no biennial flight review

within the previous 24 months. It is also alleged that you operated contrary to ATC directives by failing to contact Cleveland Departure Control.

If the facts as stated are correct, it appears that there has been a violation of Federal Aviation Regulation 61.3(a) and (c), 61.57(a)(1) and (3) and 91.75(a). We would appreciate receiving any evidence or statements you might care to make regarding this matter within ten (10) days of receipt of this letter Any discussion or written statements furnished by you will be given consideration in our investigation. If we do not hear from you within the specified time, our report will be forwarded without the benefit of your statement.

If we can be of further assistance, please feel free to contact this office during duty hours from 7:30 A.M. to 4:00 P.M.,

Monday through Friday, telephone number

(216) 267-0220.

Sincerely,

(Signature of Other Than)

ROGER E. RIVIERE
Aviation Safety Inspector, AGL-GADO-6

Appendix F

CONSTITUTION OF THE UNITED STATES,

Amendment V:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a present ment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT:

"No person ... shall ... be deprived of life, liberty, or property without due process of law."

Title 28, United States Code, Section 547

"Except as otherwise provided by law, each United States attorney, within his district, shall—

(1) prosecute for all offenses against the United States;

(2) prosecute or defend, for the Government, all civil actions, suits, or proceedings in which the United States is concerned;

(3) appear in behalf of the defendants in all civil actions, suits

or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury;

(4) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings; and

(5) make such reports as the Attorney General may direct.

Title 28, U.S.C. Section 1254.

certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws or the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case

as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Title 49, U.S.C., Section 1486

(a) Any order, affirmative or negative, issued by the Board or Administrator under this Act...shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

(b) A petition under this section shall be filed ~~in~~ the court of the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Board or Administrator shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28, United States Code.

Title 49, U.S.C. § 1429(a):

Reinspection or reexamination; amendment, suspension or revocation of certification

Procedure; notification; hearing; appeal to National Transportation Safety Board; judicial review

(a) The Administrator may, from time to time, reinspect any civil aircraft, aircraft, engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection or reexamination, or if, as a result of any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate. Prior to amending, modifying, suspending, or revoking any of the foregoing certificates, the Administrator shall advise the holder thereof as to any charges or other reasons relied upon by the Administrator for his proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be

amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order of the Administrator under this section may appeal the Administrator's order to the National Transportation Safety Board and the National Transportation Safety Board may, after notice and hearing, amend, modify, or reverse the Administrator's order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the Administrator's order. In the conduct of its hearings the National Transportation Safety Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the National Transportation Safety Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the National Transportation Safety Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, ~~in~~ which event the order shall remain effective and the National Transportation Safety Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the National Transportation Safety Board's order may obtain judicial review of said order under the provisions of section 1486 of this title, and the Administrator shall be made a party to such proceedings.

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[1] So in original.

Title 49, U.S.C. § 1481

The Board and the Administrator, subject to the provisions of this Act and the Administrative Procedure Act, may conduct their proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice. No member of the Board or Agency shall participate in any hearing or proceeding in which he has a pecuniary interest. Any person may appear before the Board or Agency and be heard in person or by attorney. The Board, in its discretion, may enter its appearance and participate as an interested party in any proceeding conducted by the Administrator under title III of this Act, and in any proceeding conducted by the Administrator under title VI of this Act from which no appeal is provided to the Board. Every vote and official act of the Board and the Agency shall be entered of record, and the proceedings thereof shall be open to the public upon request of any interested party, unless the Board or the Administrator determines that secrecy is requisite on grounds of national defense.

Title 49, U.S.C. § 1903

(a) The Board shall—

(1) investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any—

(A) aircraft accident which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 1655(d) of this title pursuant to title VII of the Federal Aviation Act of 1958, as amended;

(9) review on appeal (A) the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 1422, 1429, 9r 1431(c) of this title;...

Legislative History, U.S. Code Congressional & Administrative News, 1966, Vol. 2, page 3390

Section 5. National Transportation Safety Board

Subsection (a) established the National Transportation Safety Board.

Subsection (b) vests in the Board the functions, powers, and duties transferred by section 6 with regard to (1) determining the cause or probable cause of transportation accidents and reporting the facts of such accidents; and (2) the review on appeal of actions by the Department suspending or otherwise changing certificates or licenses issued by the Secretary.

Title 5, U.S.C. § 554 Adjudications

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place and nature

of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceedings shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceedings, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 558 of this title.

Title 5, U.S.C. § 556

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received but the agency as a matter of policy shall provide for the exculsion of irrelevant, immaterial, or unduly repetitious evidence. A

sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses, an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

Title 5, U.S.C. § 558

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

FAA ORDER No. 2150.3 Compliance and Enforcement Program

Date of Issue: May 16, 1980

Chapter 8. REEXAMINATION AND REINSPECTION UNDER SECTION 609 OF THE FEDERAL AVIATION ACT
[Title 49, U.S.C. § 1429(a)]

801. PROCEDURE. When an inspector has reason to believe, either through reliable reports, personal knowledge, or on the basis of evidence obtained through investigation, that a certificate holder may not be qualified to exercise the privileges of a particular certificate or rating, a reexamination or reinspection may be required.

a. The investigating inspector will notify the certificate holder by certified mail that a reinspection or reexamination is necessary.

* * *

d. If the certificate holder fails to comply with the letter of reinspection or reexamination:

* * *

(3) Legal counsel will issue an order of suspension, in accordance with the provisions of Chapter 12, when the evidence submitted is sufficient to establish that the certificate holder may not be qualified to hold the certificate or that safety

in air commerce or air transportation and the public interest requires such action.

Chapter 12. LEGAL ENFORCEMENT ACTION

1203. CERTIFICATE ACTION UNDER THE FEDERAL AVIATION ACT (SECTION 609) [Title 49, U.S.C. § 1429(a)]

When it is determined that certificate suspension or revocation is the appropriate enforcement action considering the policy set out in Chapter 2, the following guidance shall be used by legal counsel in processing the case.

a. Certificate action for legal enforcement.

(1) Suspension or revocation action. Suspension may be taken as either a punitive or remedial action... Revocation of a certificate or rating is appropriate in cases where specifically authorized by regulation, or where the evidence or other information...establish that the holder lacks the qualifications required for holding such certificate or rating.

* * *

d. Informal conference. In certificate action case, the informal conference provides the certificate holder an opportunity to be heard as required by Section 609(a)...The following points relating to the informal conference should be considered:

(1) It provides an opportunity for full and open discussion of the case. The informal conference adds flexibility to the enforcement program and should lead to a better understanding of the purposes and objectives of the

program. Full discussion of the incident may result in the violator accepting a sanction without further appeal, thus avoiding time and expense. In many instances, the informal conference process will disclose facts not revealed in the violation report, which may mitigate the sanction or cause withdrawal of the charges.

* * *

e. Orders of suspension or revocation.

(1) Issuance of order. The order representing the final FAA certificate action will be issued by an official authorized in FAR 13.19. Another attorney, with appropriate delegation, may sign with a by-line under the name and title of such official. If the order is issued over the signature of an attorney other than such official, a written delegation authorizing the attorney to sign orders shall be sent to AGC-200.

Title 14, C.F.R. § 13.19

(a) Under section 609 of the Federal Aviation Act of 1958, [codified as 49 USC 1429], the Administrator may reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, and may re-examine any civil airman...

(b) If, as a result of such reinspection, re-examination or other investigation made by the Administrator under section 609 of the FA Act, the Administrator determines that the public interest and safety in air commerce requires it, the Administrator may issue an order amending, suspending, or

revoking, all or part of any type certificate...

(c) Before issuing an order under paragraph (b) of this section, the Chief Counsel, the Assistant Chief counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel... advises the certificate holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked...

Title 49, C.F.R. § 821.31

(a) The order of the Administrator from which an appeal has been taken shall serve as the complaint. The complaint shall be filed by the Administrator with the Board within 5 days after the notice of appeal has been filed upon the Administrator. The complaint shall be accompanied by the Administrator's proof of service upon respondent.
(b) If the Administrator claims that respondent lacks qualification as an airman, the order filed as the complaint, or an accompanying statement shall recite on which of the facts this contention is based.
(c) The respondent shall file an answer to the complaint within 20 days of service of the complaint upon him by the Administrator. Failure to deny the truth of any allegation or allegations of the complaint may be

deemed an admission of the truth of the allegation or allegations not answered.

Title 49, C.F.R. § 821.32

In proceedings under section 609 of the Act, the burden of proof shall be upon the Administrator.

Title 49, C.F.R. § 821.33

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder...

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he shall proceed to a hearing on the lack of qualification issue only, and he shall so inform the parties. The respondent shall be put on notice that he is to defend against lack of qualification

and not merely against a proposed remedial sanction.

Title 28 C.F.R. Appendix to Subpart Y—Redelegations of Authority to Compromise and Close Civil Claims, Civil Division, [Directive No. 110-78]

Redelegation of Authority of Branch Directors, Heads of Offices and U. S. Attorneys in Civil Division Cases

Section 1. Delegations of authority to branch directors, unit chiefs, and heads of field offices.

Sec. 2. Delegations of authority to U.S. Attorneys.

(a) Cases routinely referred.

(b) Direct referral by agencies.

(c) Cases not covered.

(d) Further delegations.

Sec. 3. Exceptions. (a) Notwithstanding the above redelegations, the Assistant Attorney General's approval must be obtained when (1) an agency whose views must be solicited objects in writing to the proposed closing or dismissal of a case or to the acceptance or rejection of a proposed compromise; (2) the responsible Justice official is of the opinion that because of a question of law or policy presented, or for any other reason, the proposal should receive the personal attention of the Assistant Attorney General; (3) the compromise or closing will, as a practical matter, control or adversely influence the disposition of related claims whose aggregate value exceeds the monetary limit imposed upon the redelegated authority, or (4) the matter is on appeal.

(b) The views of a Federal agency must

be solicited with respect to any proposal to compromise or close a claim, whenever (1) the agency is a party to the claim, (2) the agency has requested that it be consulted with respect to any proposed compromise or closing, or (3) the compromise or closing would affect any policy of that agency.

Sec. 4. Adverse decisions.